



G A R V E Y S C H U B E R T B A R E R  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WASHINGTON D.C. OFFICE

*fifth floor*

*flour mill building*

*1000 potomac street nw*

*washington, d.c. 20007-3501*

TEL 202 965 7880 FAX 202 965 1729

*anchorage, alaska*

*beijing, china*

*new york, new york*

*portland, oregon*

*seattle, washington*

GSBLAW.COM

*Please reply to COLIN ANDREWS  
candrews@gsblaw.com  
TEL EXT 2527*

June 17, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, D.C. 20554

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules  
for Digital Low Power Television and Television Translator Stations,*  
MB Docket No. 03-185

Notice of *ex parte* presentation

Dear Ms. Dortch:

In accordance with FCC Rule 1.1206(b)(2), this letter is submitted to notify you that on June 15, 2015, David J. Mallof, Principal of Free Access & Broadcast Telemedia, LLC ("FAB"), and undersigned counsel met with Chanelle P. Hardy, Chief of Staff and Media Legal Advisor, and Louis Peraertz, Senior Legal Advisor, Wireless, Public Safety and International, both in the office of FCC Commissioner Mignon L. Clyburn. Topics discussed included FAB's requests that the Commission:

- Release data describing the impacts the incentive auction and repacking process will have on low power television ("LPTV") stations. The Commission indicated in its January 8, 2015, *Order* denying FAB's "Motion to Toll the Comment and Reply Comment Deadlines in the Third Notice of Proposed Rulemaking" that the impacts would be considered at a later date.<sup>1</sup>

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<sup>1</sup> See *Order*, DA 15-31, released January 8, 2015, para. 7, available at: [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-15-31A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-15-31A1.pdf). See also FAB's *Motion to Toll*, dated December 22, 2014 submitted in three parts, available at: <http://apps.fcc.gov/ecfs/document/view?id=60001010739>, <http://apps.fcc.gov/ecfs/document/view?id=60001010740>, and <http://apps.fcc.gov/ecfs/document/view?id=60001010741>.



Such data remains necessary in order to offer meaningful proposals on how to mitigate auction's potential harm to LPTV licensees, as requested by the Commission in the Third Notice of Proposed Rulemaking.<sup>2</sup> FAB indicated it likely will file a Freedom of Information request and also ask the Commission to reopen comments in the 3<sup>rd</sup> NPRM when the requested information is produced. FAB believes the integrity and completeness of the rulemaking and the statutorily required Final Regulatory Flexibility Analysis ("FRFA") will be compromised if a Report and Order is issued without the opportunity to review the impact and comment on the data.<sup>3</sup>

- Consider the property attributes of spectrum used by LPTV licensees whose spectrum will be taken and repurposed in the name of the public good that a court might find to be a taking without just compensation under the U.S. Constitution.
- Reject the notion that a somehow "vacant" 6MHz fixed channel will be available everywhere nationwide post-auction before all LPTV licenses are fully repacked. The pending proceeding "*Amendment of Parts 15, 73, and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band For Use By Wireless Microphones and White Space Devices*" suggests that a new unlicensed service can trump bona fide existing LPTV licensees, which is contrary to the Spectrum Act and the FCC's other statutory obligations.

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<sup>2</sup> The Commission requested comments on "additional measures we should consider in order to mitigate the impact of the incentive auction on LPTV and TV translator stations and to help preserve the important services they provide." Third Notice of Proposed Rulemaking, FCC 14-151, released October 10, 2014 ("*Third NPRM*"), para. 59, available at <http://apps.fcc.gov/ecfs/document/view?id=60000976623>. The Commission also directed commenters to "...describe in detail any perceived benefits and disadvantages of the measures advocated." *Id.*

<sup>3</sup> The underlying assumptions and outputs of the FCC analyses that gave rise to the case representations of the Greenhill Report are central considerations to any further Commission action in this matter. Such considerations are essential for reconsideration and the promulgation of any policy alternatives and conclusions required for the *Third NPRM* and to conform to the FCC's obligations under the RFA. In a meeting with the Incentive Auction Task Force ("IATF") on May 21, 2015, FAB mentioned that adopting measures in the *Third NPRM* without release of the scope of the impacts on LPTV of clearing 126 MHz, reserving an added 6 MHz block for unlicensed services, and selling 100 MHz in open market at highly specific price points for full-power and Class A stations in 210 market areas will undermine the rulemaking as well as the Final Regulatory Flexibility Analysis.



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Points made in the presentation are more fully set forth in FAB's submissions filed in Dockets 12-268 and 03-185.

Respectfully submitted,

/s/

Colin Black Andrews  
Counsel to Free Access & Broadcast Telemedia, LLC

cc: Channele P. Hardy (via email to Channele.Hardy@fcc.gov)  
Louis Peraertz (via email to Louis.Peraertz@fcc.gov)  
Gary Epstein (via email to Gary.Epstein@fcc.gov)  
Howard J. Symons (via email to Howard.Symons@fcc.gov)  
William T. Lake (via email to William.Lake@fcc.gov)  
Barbara Kreisman (via email to Barbara.Kreisman@fcc.gov)  
Thomas Reed (via e-mail to Thomas.Reed@fcc.gov)  
James W. Wiley, III (via email to James.Wiley@fcc.gov)  
Claudia Rodgers, Acting Chief Counsel for Advocacy, United States Small Business Administration (via email to: Claudia.Rodgers@sba.gov )